

Fast Track Legislation from the Perspective of People's Sovereignty: Criticism of the Weakening of Public Participation in the Legislative Process

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Abstract

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This article examines the practice of fast-track legislation in the formation of laws in Indonesia from the perspective of popular sovereignty and democratic constitutionalism. This study aims to analyze how accelerated legislation affects the quality of public participation in lawmaking. This study uses a normative legal research method with a legislative, conceptual, and constitutional approach. A literature review was used to collect primary, secondary, and tertiary legal materials. The results of the study show that the fast-track legislation mechanism has led to technocratic legislative practices characterized by difficulty in accessing supporting documents (academic papers and draft bills) and limited space for deliberation, causing the substantive legitimacy of laws to be increasingly eroded. Strengthening participation through amendments to Article 96 of Law No. 12 of 2011 through Law No. 13 of 2022 by adopting the concept of meaningful participation as formulated by the Constitutional Court in Decision No. 91/PUU-XVIII/2020 has proven unable to minimize the impact of fast-track legislation. This article concludes that the constitutional limits of fast-track legislation lie in the fulfillment of public legitimacy, which can only be achieved through meaningful participation. Therefore, strict regulations regarding time limits for the formation of laws and meaningful participation mechanisms are necessary to prevent tokenistic legislation that contradicts the principle of people's sovereignty.

Abstrak.

Artikel ini menelaah praktik fast-track legislation dalam pembentukan undang-undang di Indonesia dari perspektif kedaulatan rakyat dan konstitusionalisme demokratis. Penelitian ini bertujuan untuk menganalisis bagaimana percepatan legislasi memengaruhi kualitas partisipasi publik dalam pembentukan undang-undang. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan konstitusional, studi kepustakaan digunakan untuk mengumpulkan bahan hukum primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa mekanisme *fast-track legislation* telah mengarah pada praktik legislasi teknokratik yang ditandai dengan sulitnya mengakses dokumen pendukung (Naskah Akademik dan draf rancangan) dan ruang deliberasi yang terbatas menyebabkan legitimasi substantif suatu undang-undang semakin tergerus. Penguatan partisipasi melalui perubahan ketentuan Pasal 96 Undang-undang Nomor 12 Tahun 2011 melalui Undang-undang Nomor 13 Tahun 2022 dengan mengadopsi konsep partisipasi bermakna (*meaningful participation*) yang dirumuskan Mahkamah Konstitusi dalam Putusan Nomor 91/PUU-XVIII/2020 terbukti tidak mampu meminimalisasi

dampak dari fast-track legislation. Artikel ini menyimpulkan bahwa batas konstitusional *fast-track legislation* terletak pada terpenuhinya legitimasi publik yang hanya dapat terwujud melalui partisipasi yang bermakna (*meaningful participation*). Oleh karena itu, pengaturan yang tegas mengenai limitasi waktu pembentukan suatu undang-undang dan mekanisme partisipasi yang bermakna diperlukan guna mencegah praktik legislasi tokenistik yang bertentangan dengan prinsip kedaulatan rakyat.

A. INTRODUCTION

Community involvement in legislative practices is often carried out purely as a formality; it is more of a fulfillment of administrative procedures than a meaningful substantive process, in order to fulfill the obligations of legislators. This is evident in the drafting of several laws over the past seven years, which were rushed through with minimal public involvement. Several notable cases include the revision of the Corruption Eradication Commission (KPK) Law and the enactment of Law No. 11 of 2020 on Job Creation, which was formed using the Omnibus Law method, the revision of the Constitutional Court Law, and the revision of the Regional Head Election Law. The drafting of several laws has drawn widespread criticism for failing to reflect the principles of openness and meaningful participation.

Public participation in lawmaking is a manifestation of the principle of popular sovereignty and a form of deliberative democracy. Explicitly, Article 1 Paragraph (2) of the Constitution of the Republic of Indonesia (UUD NRI 1945) has confirmed that sovereignty resides with the people. This provision implies the importance of public involvement in all aspects of state administration, including in the formulation of legal policies through the enactment of laws.¹

Public participation not only enhances the political and legal legitimacy of legislative products, but also reflects the quality of the substance of the law itself. Laws drafted with substantial public involvement will be more aspirational, responsive to community needs, and reflect the transparency and accountability of government administration. Conversely, minimal participation in the legislative process not only disregards the principles of transparency and accountability, but also has the potential to result in laws that are formally and substantially flawed.

The neglect of the public's right to be involved in the legislative process often occurs in the formulation of laws, especially those that are fast-tracked. Fast-track legislation is a legislative process that emphasizes speed in the formation of a bill.² In the Indonesian context, fast-track legislation must be distinguished from Government Regulations in Lieu of Laws (Perppu), which

¹ Fahmi Ramadhan Firdaus. (2024). "Public Participation in Law-Making Process: A Comparative Perspective of 5 (Five) Democratic Countries: Partisipasi Publik Dalam Pembentukan Undang-Undang: Perspektif Perbandingan 5 (Lima) Negara Demokratis". *Jurnal Konstitusi* 21, 2: 203–225.

² Ibnu Sina Chandranegara. (2017). "Pengadopsian Mekanisme Fast-Track Legislation Dalam Pengusulan Rancangan Undang-Undang Oleh Presiden (Adopting Fast-track legislation Procedure for Presidential Legislative Power)". *Science* 13: 413-430.

are issued by the head of government on the basis of regulatory authority in cases of emergency (when circumstances so require), and therefore do not require public participation. Meanwhile, fast-track legislation is the normal process of enacting laws but carried out in a relatively short period of time.

Fast-track legislation is often an option for lawmakers for several reasons, namely urgency, time efficiency, and national strategic interests. However, normatively speaking, Law No. 12 of 2011 on the Formation of Legislation and its two amendments do not recognize fast-track legislation at all. But in fact, this practice is often used by lawmakers to speed up the legislative process.

The lack of public involvement in the legislative process poses a serious threat to the principle of people's sovereignty, which is explicitly stated in Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The principle of popular sovereignty is a constitutional basis that justifies that the administration of government must be based on the will of the people. Jimly Asshiddiqie places people's sovereignty as a fundamental principle in a democratic system of government, so that ignoring public involvement constitutes a violation of democratic constitutionalism.³

Weak public participation in lawmaking basically does not only occur in the accelerated legislative process. However, in terms of the time frame for drafting, it is certain that the accelerated legislative process clearly limits the space for public involvement in the various stages of drafting, and will ultimately result in low-quality legal products.

A number of studies have reinforced this thesis, such as the findings of Dewi Sartika Mokoagow, who emphasized that the fast track mechanism without clear reasons is a major problem in the lack of public participation in the legislative process.⁴ Eko Rinaldo Damanik et al. also found that public participation in lawmaking remains symbolic and procedural in nature, without taking substantive public aspirations into account.⁵ Rizky Julranda et al. also emphasize the importance of public participation in the formulation of laws and regulations.⁶ Meanwhile, Bagus Hermanto highlighted the legislative process, which has not yet achieved meaningful public

³ Arman Rohmatillah, Moh. Sa'diyin, dan Ahmad Afan Zaini. (2023). "Tantangan Dan Prospek :Implementasi Prinsip-Prinsip Demokrasi Dalam Hukum Tata Negara Indonesia." *Journal of Sharia* 2. 2: 90-100.

⁴ Dewi Sartika Mokoagow. (2024). "Abusive Law Making (Analisis Penurunan Partisipasi Publik Dalam Proses Pembentukan Undang-Undang)". *Journal of Innovation Research and Knowledge*, 4.7: 4733–4748. <https://doi.org/10.53625/jirk.v4i7.9124>

⁵ Eko Rinaldo Damanik, Thea Farina, and Satriya Nugraha. (2025). "Krisis Partisipasi Publik dalam Pembentukan Undang-Undang di Indonesia: Problematika Hak Konstitusional dan Pengabaian Aspirasi Rakyat." *Innovative: Journal Of Social Science Research* 5.2: 2518-2540. <https://doi.org/10.31004/innovative.v5i2.18664>

⁶ Rizky Julranda, Pran Mario Simanjuntak, dan Sultan Fadillah Effendi. (2022). "Quo Vadis: Penerapan Asas Partisipasi Publik dalam Pembentukan Peraturan Perundang-Undangan di Indonesia". *Padjadjaran Law Review* 10.2: 1-10. <https://doi.org/10.56895/plr.v10i2.1052>

participation and the highest degree of participation.⁷ Several studies describe how the public's right to participate in lawmaking has been neglected. This study will focus on analyzing how the fast-track legislation process has eroded people's sovereignty as the most fundamental aspect of a constitutional democracy. Fast-track legislation is not just a matter of accelerating the legislative process, but has become a mechanism for lawmaking that systematically shifts the function of representing the people by narrowing the space for public participation. The sovereignty of the people, which should be the basis for the substantive legitimacy of lawmaking, has been reduced by practices that are formalistic and procedural in nature. This research will attempt to show this tendency, that the problem is not merely a technical legislative issue, but reflects the erosion of constitutional democratic principles, particularly in relation to the effectiveness of lawmaking and the necessity of maintaining the sovereignty of the people in the legislative process.

B. RESEARCH METHOD

This research is a type of normative legal research using a statute approach, a conceptual approach, and a constitutional approach. The legislative approach is an approach that examines legislation relevant to the issue under review. The conceptual approach is an approach that uses various perspectives and doctrines developed in legal science. Meanwhile, the constitutional approach is an approach used to explore the fundamental values contained in the 1945 Constitution of the Republic of Indonesia.⁸

The types and materials of law used are primary, secondary, and tertiary legal materials. Primary legal materials are the main legal materials and are binding (have authority), including laws and regulations and court decisions. Secondary legal materials are supporting legal sources in the form of scientific journals, textbooks, and relevant research reports.⁹ Meanwhile, tertiary legal materials consist of supporting sources such as legal encyclopedias and dictionaries, which can help researchers understand primary and secondary legal materials.¹⁰ Literature studies are used to collect primary, secondary, and tertiary legal materials, which are then processed and analyzed qualitatively.¹¹

⁷ Bagus Hermanto. (2023). "Dinamika Partisipasi Publik Dalam Mewujudkan Legislasi Yang Partisipatoris" *Jurnal Yudisial* 16.2: 205-231. <https://doi.org/10.29123/jy.v16i2.668>

⁸ Irwansyah. (2021). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Edisi revisi. Yogyakarta: Mirra Buana Media:

⁹ Teguh Prasetyo. (2019). *Penelitian Hukum Suatu Perspektif Teori Keadilan Bermartabat*, Cet. I, Bandung: Nusa Media, 2019: 44.

¹⁰ Taufik Firmanto. (2024). *Metode Penelitian Hukum; Panduan Komprehensif Penulisan Ilmiah Bidang Hukum*, Cet. I, Jambi: PT. Sonpedia Publishing Indonesia: 95.

¹¹ Ani Purwati. (2020). *Metode Penelitian Hukum Teori Dan Praktik*, ctk. Pertama, Surabaya: CV. Jakad Media Publishing: 114.

C. RESULTS AND DISCUSSION

Public participation in lawmaking in recent years has not shown any encouraging signs of improvement. Public participation in lawmaking in recent years has not shown any encouraging signs of improvement. Research by Christina Clarissa Intania, a researcher at The Indonesian Institute, shows that tokenism still occurs in the drafting of several bills. Research by Christina Clarissa Intania, a researcher at The Indonesian Institute, shows that tokenism still occurs in the drafting of several bills.¹² According to Creighton, participation is two-way communication and interaction, with the main objective of producing better decisions that are supported by the community.¹³ Huntington defines political participation as activities undertaken by private citizens with the aim of influencing government decision-making.¹⁴

Normatively, there are several provisions governing the public's right to be involved or participate in the administration of government, including in the legislative process. This right is guaranteed in the constitution through Article 28 of the 1945 Constitution of the Republic of Indonesia, which affirms that every citizen has the right to associate, assemble, and express their opinions verbally and in writing. Furthermore, Article 28C Paragraph (2) of the 1945 Constitution of the Republic of Indonesia also affirms the right of every person to advance and fight for their rights collectively. Furthermore, Article 28C Paragraph (2) of the 1945 Constitution of the Republic of Indonesia also affirms the right of every person to advance and fight for their rights collectively.

In addition to referring to the norms in the constitution, public participation is also regulated in Article 5 of Law Number 12 of 2011 concerning the Formation of Legislation, which emphasizes that every formation of legislation must apply several principles, one of which is the principle of openness.

Dalam membentuk Peraturan Perundang-undangan harus dilakukan berdasarkan pada asas Pembentukan Peraturan Perundang-undangan yang baik, yang meliputi:

- a. kejelasan tujuan;*
- b. kelembagaan atau pejabat pembentuk yang tepat;*
- c. kesesuaian antara jenis, hierarki, dan materi muatan;*
- d. dapat dilaksanakan;*
- e. kedayagunaan dan kehasilgunaan;*

¹² Christina Clarissa Intania. (2024). "Tingkat Partisipasi Masyarakat Dalam Pembentukan Undang-Undang." *The Indonesian Institute*.

¹³ Siti Hidayat. (2019). "Partisipasi Masyarakat Dalam Pembentukan Undang-Undang (Studi Perbandingan Indonesia Dengan Afrika Selatan)." *Jurnal Bina Mulia Hukum* 3.2.

¹⁴ Samuel P. Huntington dan Joan Nelson. (1994). *Partisipasi Politik di Negara Berkembang I*, terj. Sahat Simamora, Jakarta: Rineka Cipta, 1994.

f. kejelasan rumusan; dan

g. **keterbukaan.**

The application of the principle of openness in the law-making process is further clarified in the explanatory notes to Article 5. “Yang dimaksud dengan “*asas keterbukaan*” adalah bahwa dalam Pembentukan Peraturan Perundang-undangan mulai dari perencanaan, penyusunan, pembahasan, pengesahan atau penetapan, dan pengundangan bersifat transparan dan terbuka. Dengan demikian, seluruh lapisan masyarakat mempunyai kesempatan yang seluas-luasnya untuk memberikan masukan dalam Pembentukan Peraturan Perundang-undangan.” Based on this explanation, the public has the opportunity to be involved in the formation of a law.

The question that then arises is at what stage should the community/public be involved in the formulation of laws and what should the mechanism for their involvement be? The question that then arises is at what stage should the community/public be involved in the formulation of laws and what should the mechanism for their involvement be? In Decision Number 91/PUU-XVIII/2020, the Constitutional Court emphasized that meaningful participation must be implemented in at least 3 (three) of the 5 (five) stages of law formation, namely the planning stage (submission, either by the DPR or the president), the discussion stage, and the approval stage. Meanwhile, the other two stages, namely ratification and promulgation, are merely administrative in nature and fall under the sole authority of the president.

Following up on the Constitutional Court's decision, the legislators (the House of Representatives and the president) then amended Article 96 of Law Number 12 of 2011 through Law Number 13 of 2022 and reaffirmed that the public has the right to provide oral and/or written input at every stage of the legislative process. Article 96 of Law No. 12 of 2011 does have several weaknesses in guaranteeing public participation. A comparison of the provisions in Article 96 before and after the amendment is outlined in the following table:

Table 1.
Comparison of the Wording of Article 96 of Law Number 12 of 2011 and Law Number 13 of 2022.

Aspect	UU/12/2011	UU/13/2022
Scope of participation	The right to provide input in the formulation of legislation	The right to provide input at every stage of the legislative process
Forms of participation	Oral and/or written	Oral and/or written
How to provide feedback	Specified in a limited manner (public hearings, working visits, outreach, seminars/workshops/discussions)	Formulated generally: online and/or offline; expanded forms of consultation
Subject	Individuals or groups with an interest in the substance of the draft regulation	Individuals or groups who are directly affected and/or have an

		interest in the content of the draft regulation.
Access documents	Draft legislation must be easily accessible	Academic Papers and/or Draft Legislation can be accessed
Obligations of the creator	Not explicitly specified	Must inform the public about the formulation of regulations
Public consultation	Not formulated as a structured obligation	Explicitly regulated as a means of fulfilling the right to participation
Participation results status	Not specified	To be taken into consideration in planning, preparation, and discussion
Participation results status	Not regulated	The creator can explain the results of the input discussion.
Advanced settings	Nothing	Further regulated in the Regulations of the DPR, DPD, and President

Source: Compiled from Primary Legal Materials

Substantively, the differences between Article 96 before and after the amendment can be identified in three main aspects. First, the regulation of public participation has shifted from merely recognizing formal rights to a more structured participatory mechanism, reflected in the expansion and specification of obligations imposed on lawmaking bodies. Second, the amendment broadens the categories of subjects entitled to participate. Whereas the pre-amendment provision only referred to “interested parties,” the revised formulation explicitly accommodates parties directly affected and requires their involvement. Third, the amendment strengthens procedural arrangements for public participation, particularly by enhancing access to supporting documents—such as academic papers and draft bills—and by requiring that the results of public consultations be used as materials in legislative deliberations.

However, its weakness lies in the feedback mechanism for public consultation results, which still uses the word “may” as stipulated in paragraph (8) of Law Number 12 of 2011., “*Pembentuk Peraturan Perundang-undangan dapat menjelaskan kepada masyarakat mengenai hasil pembahasan masukan masyarakat sebagaimana dimaksud pada ayat (1)*”. In Appendix II of Law Number 12 of 2011, the word “may” is used to indicate the discretionary nature of the authority held by an official or an organ/institution.¹⁵ Thus, the feedback mechanism is not a requirement, but an option for lawmakers.

Doctrinally, public participation in lawmaking aims, among other things, to: (i) creating strong collective intelligence (*strong collective intelligence*) which can provide better analysis of potential impacts and broader considerations in the legislative process for higher overall quality of results,

¹⁵ Lampiran II Undang-undang Nomor 12 Tahun 2011 Nomor 267.

(ii) building a more inclusive and representative legislature (*inclusive and representative*) in decision-making; (iii) increased trust and confidence (*trust and confidence*) citizens toward the legislative body; (iv) strengthening legitimacy and accountability (*legitimacy and responsibility*) together for every decision and action; (v) improving understanding (*improved understanding*) about the role of parliament and members of parliament by citizens; (vi) providing opportunities for citizens (*opportunities for citizens*) to communicate their interests; and (vii) creating a more accountable and transparent parliament (*accountable and transparent*).¹⁶ Public participation serves as a necessary corrective mechanism, broadening the knowledge base of lawmakers and thereby preventing legislation based solely on elitist assumptions. An inclusive, transparent, and accountable process will strengthen substantive legitimacy and a sense of shared responsibility for the resulting laws, which will ultimately increase social trust and compliance.

Transparency means that the public has easy access to all supporting documents, thereby ensuring that they are adequately informed (public knowledge). Burkens emphasized that the principle of openness is one of the minimum requirements in the concept of a democratic state.¹⁷ Restricting access to information will clearly have an impact on the level of public knowledge, which will automatically affect the public's efforts to provide input as a form of participation.

In its decision No. 91/PUU-XVIII/2020, the Constitutional Court not only emphasized the importance of public participation in every stage of lawmaking, but also formulated ways to realize more meaningful participation. Meaningful participation as referred to by the Constitutional Court includes three (3) basic rights that must be fulfilled by lawmakers, namely: 1) right to be heard; 2) right to be considered; and 3) right to be explained. Participation will not be considered meaningful if public opinion is only heard, but must also influence and elicit a response from lawmakers. Because these three rights form an inseparable whole.

Regardless of these normative and doctrinal developments, the practice of fast-track legislation has become increasingly prominent. Fast-track legislation is the process of enacting laws quickly or expeditiously.¹⁸ Mechanisms that are not explicitly regulated in Law No. 12 of 2011 on the Formation of Legislation and its two amendments, but are often applied by legislators in order to accelerate the legislative process, have resulted in limited public participation and low quality

¹⁶ Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020, Bagian Pertimbangan Hukum poin 3.17.8.

¹⁷ Ida Rahma. (2019). "Partisipasi Publik Dan Keterbukaan Informasi Dalam Penyusunan Kebijakan (Studi Kasus Dewan Perwakilan Rakyat Kabupaten Aceh Selatan)." *Jurnal Hukum Samudra Keadilan* 14. 1: 80-95.

¹⁸ Ibnu Sina Chandranegara. (2017). "Pengadopsian Mekanisme Fast-Track Legislation Dalam Pengusulan Rancangan Undang-Undang Oleh Presiden (Adopting Fast-track legislation Procedure for Presidential Legislative Power)." *Science* 13: 413-430.

legal substance.¹⁹ Between 2019 and 2025, a number of strategic laws were enacted in a relatively short period of time, as outlined in the following table:

Table 2
List of Laws Enacted in a Relatively Short Period of Time²⁰

Law	Estimated Time of Formation
Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission	The Presidential Letter was sent on September 11, 2019, and approved at the DPR Plenary Meeting on September 17, 2019. (± 6 days)
Law Number 11 of 2020 concerning Job Creation ²¹	The Presidential Letter was sent on February 12, 2020, and was approved as law at the DPR Plenary Meeting on October 5, 2020. (± 236 days). <i>(This timeframe is considered too short, given that the omnibus law amends 79 laws from various sectors.)</i>
Law No. 3 of 2025 concerning Amendments to Law No. 34 of 2004 concerning the Indonesian National Armed Forces	The Presidential Letter was sent on February 13, 2025, and was approved as law at the DPR Plenary Session on March 20, 2025. (± 35 days)
Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining	The Presidential Letter was read during a plenary session on January 23, 2025, and was approved as law during a plenary session of the House of Representatives on February 18, 2025. (± 26 days)
Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2023 concerning State-Owned Enterprises	Presidential letter dated September 19, 2025, and approved as law in a plenary session of the House of Representatives on October 6, 2025. (± 17 days)

Source: Compiled from secondary legal materials

Although the mechanism of fast track legislation has not been formalized, it has become systemic practice. The need for regulations at the level of legislation is often covered up by accelerating the legislative process. Constitutionally, the need for regulations at the level of law in emergency conditions has been regulated in Article 22 of the 1945 Constitution of the Republic

¹⁹ Eko Rinaldo Damanik, Thea Farina, and Satriya Nugraha. (2025). "Krisis Partisipasi Publik dalam Pembentukan Undang-Undang di Indonesia: Problematika Hak Konstitusional dan Pengabaian Aspirasi Rakyat." *Innovative: Journal Of Social Science Research* 5.2: 2518-2540.

²⁰ Estimasi waktu didasarkan pada Surat Presiden kepada DPR yang menandai dimulainya tahapan pembahasan suatu rancangan undang-undang dan rapat Paripurna DPR yang menyetujui suatu rancangan undang-undang menjadi undang-undang.

²¹ Dalam pengujian formil di Mahkamah Konstitusi, Undang-undang Nomor 11 Tahun 2020 dinyatakan inkonstitusional bersyarat dan salah satu alasannya karena publik tidak dilibatkan secara maksimal dalam proses pembentukannya. Mahkamah Konstitusi memerintahkan dilakukan perbaikan terhadap tata cara pembentukannya paling lama 2 tahun sejak putusan dibacakan. Namun menjelang batas waktu yang diberikan, Presiden menerbitkan Perppu yang mencabut Undang-undang Nomor 11 Tahun 2020.

of Indonesia. This article attributes authority to the president to formulate government regulations in lieu of laws, which in the hierarchy of legislation are referred to as Government Regulations in Lieu of Laws (Perppu).

Fast track legislation is considered an illusion of democratic legitimacy, because the stages of formation are merely a formality. The time constraints prevented public opinion from forming on the issues to be addressed in the bill. Furthermore, supporting documents that are difficult to access will not generate substantive input.

The ease with which the public can access various supporting documents for a draft law, such as academic papers and draft bills, is an indicator of the implementation of the principle of openness, which is the gateway to public participation. Reflecting on the drafting of several laws mentioned in Table 2, for example Law No. 11 of 2020 on Job Creation and the revision of the TNI Law, both documents were very difficult for the public to access, resulting in the emergence of various draft versions without validity.²² Even for the Job Creation Law, state institutions such as the Ombudsman of the Republic of Indonesia and the National Human Rights Commission were unable to obtain the official Academic Manuscript from the drafters, either from the House of Representatives (DPR) or the president.²³ Therefore, the enactment of the Job Creation Law is not only problematic in terms of the short time frame in which it was drafted, but also because the academic paper and draft bill were not accessible to the public. This is part of the weakening of public participation in the legislative process.

The lack of public involvement in the formation of laws created through the fast track mechanism is often covered up with the argument that the legislative power lies with the House of Representatives (DPR), which is filled with people elected in general elections and represents the people, so that the will of the people is already represented by them. In fact, representation is not a blank check; representation will lose its legitimacy when the people are not given the opportunity to provide input or correct a policy. Two-way communication between lawmakers and the public must be carried out as a manifestation of the principle of deliberative democracy.

Fast track legislation can shift the position of the people as subjects of law and holders of sovereignty and strengthen the absolutism of representative institutions. Without public involvement in every stage of lawmaking, the public's position will be reduced to that of an object

²² Kesulitan untuk mengakses Naskah Akademik juga telah ditegaskan oleh Mahkamah Konstitusi dalam Putusan Nomor 91/PUU-XVIII/2020, bagian Pertimbangan Hukum poin [3.18]. Bahkan Koalisi Masyarakat Sipil (Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), Jaringan Advokasi Tambang (Jatam), Konsorsium Pembaruan Agraria (KPA), dan Konfederasi Persatuan Buruh Indonesia (KFBI)) menggugat Presiden ke PTUN Jakarta (Perkara No: 97/G/2020/PTUN-JKT) karena penyusunan RUU Cipta Lapangan Kerja tertutup dan tidak partisipatif.

²³ Salsabiila Tiara Aulia, Sarah Firka Khalistia, Addyana Belaputri. (2022). "Tinjauan Pembentukan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Berdasarkan Prosedur Dan Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik." *Padjadjaran Law Review* 10. 2.

of policy, and ultimately, legislation will lose its social social acceptance. In fact, a good law not only fulfills its legalistic aspects, but must also be combined with public legitimacy.

The combination of legality and legitimacy is the essence of democratic government. The formal legal aspects of laws formed through the fast-track legislation mechanism may be fulfilled, but with the shortened time frame, substantive public legitimacy will be difficult to achieve. Thus, the constitutional limit of the fast-track legislation mechanism is whether or not public legitimacy is fulfilled. Bryan Thompson emphasized that the constitutionality of state actions must be derived from basic law (the constitution), but its binding force is based on supreme power (people's sovereignty).²⁴

Accelerated legislation is not entirely out of the question. Article 23 Paragraph (2) letters a and b of Law Number 12 of 2011 opens up the possibility of accelerated legislation that does not need to go through the National Legislation Program (Prolegnas) under four conditions, namely: 1) to deal with extraordinary circumstances; 2) conflict situation; 3) natural disasters; and 4) other specific circumstances that ensure national urgency. Acceleration that does not meet these conditions would violate the principle of people sovereignty. Thus, the use of the fast track mechanism in the formulation of several laws, without clear reasons, is the root cause of the lack of public participation in the legislative process. In fact, even a lengthy legislative process still leaves systemic problems of participation, let alone one that is formed in a short period of time.

Various studies show how the public's right to participate in the legislative process continues to be neglected. Muhamad Khoiril Wafa, for example, found weaknesses in the fulfillment of formal aspects (the principle of openness) in the formation of laws, particularly in fulfilling the public's right to participate in the legislative process.²⁵

Zainal Arifin Mochtar et al. also found that public participation was not taken seriously in the drafting of the Job Creation Law, which was formed using the omnibus law method.²⁶ According to Sulistina et al., laws formed using the omnibus model still require legitimacy obtained through a participatory and transparent process, not the other way around.²⁷ Moreover, the Job

²⁴ Dikutip oleh Zainal Arifin Mochtar dalam keterangannya sebagai ahli dalam pengujian formil Undang-undang Nomor 19 Tahun 2019 tentang Perubahan Kedua Atas Undang-undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi.

²⁵ Muhamad Khoiril Wafa. (2023). "Peran Dan Partisipasi Masyarakat Dalam Pembentukan Undang-Undang." *Siyasab: Jurnal Hukum Tata Negara* 3.1: 87-103.

²⁶ Zainal Arifin Mochtar, Yance Arizona, Faiz Rahman, Umar Mubdi, Garuda Era Ruhpinesthi, Mochamad Adli Wafi. (2022). "From Meaningful to Meaningless Participation: The Tragedy of Indonesia's Omnibus Law on Job Creation". *Jurnal Media Hukum*, 31, 2. DOI: 10.18196/jmh.v31i2.23557

²⁷ Sulistina Sulistina, Bayu Dwi Anggono, Al Khanif, Tran Ngoc Dinh. (2022). "The Pathway of Adopting Omnibus Law in Indonesia's Legislation: Challenges and Opportunities in Legal Reform". *Jurnal Kajian Pembaruan Hukum* 2, 2: 155-182. DOI: 10.19184/jkph.v2i2.31524

Creation Law amends 79 laws from various sectors, which will automatically have a very broad impact.

Referring to the stages of law formation, which must go through five stages, namely planning, drafting, deliberation (levels I and II), ratification or enactment, and promulgation, it is only logical that it is highly unlikely to be achieved in a short period of time, as each stage involves a series of activities. Article 43 Paragraph (3) of Law Number 12 of 2011 requires that draft laws be accompanied by an Academic Paper, which is a paper based on research or assessment. As a scientific paper written within an academic framework, its preparation certainly cannot be completed in a short period of time.

This condition was confirmed in the formal review of Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002. In his dissenting opinion, Judge Wahiduddin Adam highlighted and questioned the rationality and proportionality of the formation period, particularly the compilation of the List of Issues (DIM), which was completed in less than 24 hours, even though it touched on various fundamental aspects of the KPK's institutional structure. The discussion and preparation of dozens of DIMs, which should involve various stakeholders, cannot reasonably be done in a limited amount of time.²⁸ The same applies to the formal review of the Job Creation Law. Explicitly, the Constitutional Court stated that in the formulation of the Job Creation Law, the public was not fully involved as mandated by Article 96 of Law Number 12 of 2011. The considerations in these two different rulings share a common spirit, namely the desire to strengthen meaningful participation in every lawmaking process.

In order to achieve meaningful participation, there needs to be strict regulations regarding the time limit for drafting legislation, so that public rights are truly guaranteed and not eroded by the practice of expedited legislation. Tolerance of fast-track and exclusive legislation without strict controls risks leading to abusive legislation; legal products that favor the interests of certain powers or groups over the interests of the people in general. This contradicts the principle of democratic constitutionalism (Article 1 Paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia), which places the law as an instrument for regulating power, not as a tool for legitimizing authoritarian power.²⁹

The urgency of community participation in maintaining the quality of legislation is in line with the principle that laws and regulations must be born from a planned process, not spontaneously. Therefore, it is urgent to deconstruct the practice of fast-track legislation, which

²⁸ Putusan Mahkamah Konstitusi Nomor 79/PUU-XVII/2019, Poin 6. Pendapat Berbeda (*Dissenting Opinion*): 376-381.

²⁹ Nur Aji Pratama. (2024). "Ius Constituendum Legislati: Politik Hukum Pengaturan Fast-Track Legislati untuk Mencegah Gejala Autocratic Legalism di Indonesia". *Jurnal Legislasi Indonesia*, 21, 4: 459-473. <https://doi.org/10.54629/jli.v21i4.1261>

has clearly violated the principle of meaningful public participation in lawmaking. Legislative reform must be directed toward strengthening mechanisms that guarantee substantial public involvement in all stages of lawmaking, as well as preventing instant legislation that disregards the constitutional rights of citizens.

D. CONCLUSION

The practice of fast-track legislation in the formation of laws in Indonesia has significantly weakened public participation and eroded the principle of people's sovereignty in a constitutional democracy. This is reflected in the formulation of several strategic laws between 2019 and 2025, which were carried out in a relatively short period of time and with limited access to supporting documents such as academic papers and draft bills, as well as limited space for deliberation. Legislative acceleration that is not based on constitutional emergency conditions results in tokenistic public participation, which merely fulfills procedural obligations without providing substantial space for the public to influence the direction and substance of legal policy, thereby sacrificing substantive legitimacy for the sake of formal legality. The lack of public participation was even one of the main considerations of the Constitutional Court in declaring Law Number 11 of 2020 concerning Job Creation conditionally unconstitutional through Decision Number 91/PUU-XVIII/2020, which emphasized that the formation of laws cannot be reduced to a mere administrative process, but must reflect the principle of people's sovereignty through openness, meaningful participation, and democratic accountability. Thus, the practice of fast-track legislation that ignores these prerequisites not only causes procedural flaws, but also constitutional legitimacy problems that directly impact the quality and social applicability of the resulting law.

This study is limited to normative analysis and does not examine the empirical impact of the enactment of a law formed through the fast-track legislation mechanism. Further research is needed to examine time constraints in the legislative process quantitatively and formulate institutional designs to ensure meaningful participation in every stage of the law-making process.

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